THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.17918 of 1997
Date: 07-03-2007

Between:
S.Swami Reddy

Petitioner

And

State of A.P. rep. by Principal Secretary,
Revenue Department, Secretariat Buildings,
Hyderabad and five others

Respondents

THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.17918 of 1997

ORDER:

1. This writ petition has been instituted seeking a Writ of Mandamus particularly to the 6th respondent-Sub-Registrar at Saroornagar to entertain the registration of the sale deed of house property bearing No.5-22 and 5-22/1 in an extent of 1000 square yards of land in Plot No.62 in Survey No.9/1 situated at Saroornagar Mandal, Ranga Reddy District.

2. It is the assertion of the writ petitioner that the Income Tax Department Employees Saroornagar Cooperative House Building Society has acquired land measuring Ac.44.94 cents situate in Survey No.9/1 in Saroornagar Village and have laid out a colony and that Plot No.62 of the colony measuring 1000 square yards came to be allotted in favour of the writ petitioner and that the aforementioned Cooperative House Building Society had executed a regular sale deed on 14th May,1965 transferring the title and ownership over land of an extent of 1,000 square yards forming part of Plot No.62 of the said Colony in favour of the writ petitioner. The writ petitioner further asserts that the said sale deed was also registered with the Sub-Registrar at Saroornagar. The writ petitioner further asserts that he had constructed a residential house over the said land after obtaining the due permission from the then Grampanchayat, Saroornagar. The writ petitioner has further asserted that his residential house property has been assessed for property tax by the Saroornagar Grampanchayat

initially and upon it's merger with the L.B.Nagar (Lal Bahadur Nagar) Municipality subsequently. When the writ petitioner preferred to execute a sale deed in favour of third parties, transferring his interest, right and title over the property in question, the said sale deed was not entertained by the Sub-Registrar, Saroornagar on the pretext that he has received certain instructions from the Urban Land Ceiling Authorities that unless the Urban Land Ceiling Authorities give no objection, no sale deed shall be entertained for registration. Though no orders in writing have been passed by the Sub-Registrar, Saroornagar in that respect, the writ petitioner went on to assert that he did make an attempt to present the document in question, which was declined from being entertained. In fact, the writ petitioner had filed an affidavit today pointing out that he had entered into a transaction to transfer the property in question in favour of one Sri Mohan Reddy and his daughter and that the said document of sale of the property in question has not been entertained by the Sub-Registrar.

3. I have heard Sri C.Hanumantha Rao, the learned counsel for the writ petitioner and the learned Government Pleader for Revenue on behalf of the State.

4. The learned Government Pleader has contended that under Section 26 of the Urban Land (Ceiling and Regulation) Act, 1976 (in short 'the Act') no person holding vacant land within the ceiling limit shall transfer such land by way of sale or otherwise except after giving notice in writing of the intended transfer to the competent authority and that only after the expiry of a period of 60 days one can presume that the competent authority has no intention to purchase such land on behalf of the State Government and that it shall be lawful thereafter for such a person to transfer the land to whomsoever he may like. Hence the learned Government Pleader would suggest that the insistence of the Sub-

Registrar, Saroornagar to secure clearance from the Urban Land Ceiling Authority need not be found fault with. Section 26 of the Act gets attracted wherever and whenever any person holding vacant land within the ceiling limit seeks to transfer such vacant land in favour of third parties. The expression "vacant land" has been defined in Section 2 (q) of the Act in the following terms:

" "Vacant land" means land not being land mainly used for purpose of agriculture, in an urban agglomeration, but does not include-

(i) land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated;

(ii) in an area where there are building regulations, the land occupied by any building which has been constructed before, or is being constructed, on the appointed day with approval of the appropriate authority and the land appurtenant to such building; and

(iii) in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed on , the appointed day and the land appurtenant to such building:

Provided that where any person ordinarily keeps his cattle, other than for the purpose of dairy farming or for the purpose of breeding of live-stock, on any land situated in a village within an urban agglomeration, (described as a "village" in the revenue records), then, so much extent of the land as has been ordinarily used for the keeping of such cattle immediately before the appointed day shall not be deemed to be vacant land for the purposes of this clause."

5. It is obvious that wherever the land is occupied by any building and land appurtenant thereto is not liable to be construed as vacant land. Even otherwise, the land held by the writ petitioner was only 1,000 square yards, which is well within the ceiling limits. In this view of the matter, if the land held by the writ

petitioner is occupied by a building and the rest of it is appurtenant thereto, and the said building having already been assessed for the property tax by the local body, it has to be construed that it is not vacant land. In such a case, the question of complying with the requirements of Section 26 of the Act does not arise. Therefore, I consider it appropriate to direct the 6th respondent-Sub Registrar, Saroornagar to entertain and register any sale deed presented by the writ petitioner seeking to transfer land over which his residential building is standing, together with the land appurtenant thereto, so long as it comprised of 1000 square yards.

6. With this, the writ petition stands disposed of. No order as to costs.

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NOOTY RAMAMOHANA RAO,J

07-03-2007
Stp